duce evidence in rebuttal, unless the evidence which proves the killing rebuts the presumption.[20] Hence it seems that the affirmative charge is justifiable under such circumstances, though it is hardly to be commended.

APPORTIONMENT BETWEEN LIFE TENANT AND REMAINDERMAN OF EXPENSES AND COST OF IMPROVEMENTS.—Where there are present and future interests in the same thing, the question of apportionment often arises. In the case of personal property, for example, the distribution of extra dividends has caused much litigation.[1] In the case of realty, disputes are frequent as to who shall bear the cost of repairs and improvements. The terms of the instrument creating the two estates are naturally controlling, if they cover the point.[2] In the absence of any definitely expressed intention on the part of the grantor, the general rule is that all ordinary expenses, such as taxes and repairs, are to be paid by the life tenant, and where property is given to a trustee, he shall charge the expense of care and management of the estate to income.[3] A life tenant has no right to recover from the remainderman for improvements voluntarily made during the continuance of the estate.[4] But when the improvements are made without his procurement by an executor or trustee, this rule does not apply.[5] So where special taxes or assessments have been levied on the property for permanent improvements, "betterments", which increase the value of the remainder, or where a substantial portion of the betterment would be enjoyed by the remainderman, the cost should be borne ratably by the life tenant and remainderman, such assessments being regarded as an encumbrance on the whole estate,[6] unless the improvement is likely to wear out during the probable existence of the life estate.[7] Even though the improvement is not permanent, it is generally held that if it is likely that it will last beyond the probable life of the life tenant the expense should be apportioned.[8]

As to the method of apportionment, the courts apply different rules, ultimately reaching the same result, some holding that the life tenant should pay the interest on the amount during his life and at his death the remainderman should pay the principal,[9] others that the

[20]Commonwealth v. Gibson (1905) 211 Pa. 546, 60 Atl. 1086; Mann v. State (1906) 124 Ga. 760, 53 S. E. 324; State v. Lane (1914) 166 N. C. 333, 81 S. E. 620.

[1]See 4 Columbia Law Rev. 130; 7 Columbia Law Rev. 344.

[2]Moseley v. Marshall (1860) 22 N. Y. 200.

[3]Peirce v. Burroughs (1878) 58 N. H. 302; Hackworth v. Louisville etc. Stone Co. (1899) 106 Ky. 234, 50 S. W. 33.

[4]"Such improvements must be deemed to have been made by the life tenant for his own benefit and enjoyment during the pendency of his estate." Hagan v. Varney (1893) 147 Ill. 281, 35 N. E. 219.

[5]See Matter of Pollock (N. Y. 1877) 3 Redf. 100, 118.

[6]Huston v. Tribbetts (1898) 171 Ill. 547, 49 N. E. 711; Plympton v. Boston Dispensary (1871) 106 Mass. 544; Bobb v. Wolff (1893) 54 Mo. App. 515; Moore v. Simonson (1895) 27 Ore. 117, 39 Pac. 1105.

[7]Raiburn v. Wallace (1887) 93 Mo. 326, 3 S. W. 482. A remainderman is not ordinarily chargeable for conjectural benefits which he may never receive. Wordin's Appeal (1899) 71 Conn. 531, 42 Atl. 659.

[8]Huston v. Tribbetts, *supra;* Bobb v. Wolff, *supra.*

[9]Plympton v. Boston Dispensary, *supra.*

life tenant should pay the present value of an annuity equal to the annual interest running during the number of years which constitute the expectancy of his life and the balance should be paid by the remainderman.[10] Where the gift is to a trustee to pay the rents and profits to one for life, with remainder over, the trustee should charge the cost of the improvement to the *corpus* of the estate and thus make the life interest bear its share in diminished income, such payment itself being an equitable apportionment.[11] Where the estates are legal, an assessment for a permanent improvement is regarded as an encumbrance upon the estate, and if the life tenant pays the assessment, or if his property is about forfeited for failure to pay, he may go into equity and obtain contribution from the remainderman on the principle of suretyship.[12]

Likewise the nature of an annuity suggests that it should be paid out of the income if that is sufficient,[13] but this depends largely on the wording of the will and the circumstances of the case, and if the annuity is charged on a particular fund, both principal and income are applicable *pro rata*.[14] Also, ordinary taxes on unimproved property paying no income should be paid by the remainderman, or, if paid by a trustee, should be charged to principal,[15] and a life tenant is not bound to build on the property so as to make the land sufficiently productive to pay taxes.[16] Similarly a trustee usually must look for his compensation, if any, to the income,[17] although where he performs extra services valuable to the principal fund a charge on the principal will be allowed. The sale and conversion of realty is generally regarded as such an extra service.[18]

The question of apportionment came up in an unusual form in the recent case of *Sheffield* v. *Cooke* (R. I. 1916) 98 Atl. 161. There, instead of an estate for life and a remainder, there was an equitable fee in the residue of an estate subject to an executory devise on failure of issue. The trustees asked for instructions as to the apportionment of assessments for permanent improvements, taxes on unimproved land, and certain annuities charged on the residue, as well as their own compensation for converting realty into personalty in accordance with the provisions of the will. The court held that all

[10]Moore *v.* Simonson, *supra.*

[11]Rhode Island Hosp. Trust Co. *v.* Babbitt (1900) 22 R. I. 113, 46 Atl. 403.

[12]Bobb *v.* Wolff, *supra;* Chamberlin *v.* Gleason (1900) 163 N. Y. 214, 57 N. E. 487.

[13]Cummings *v.* Cummings (1888) 146 Mass. 501, 16 N. E. 401.

[14]Yates *v.* Yates (1860) 28 Beav. 637; *In re* Muffett (1884) 39 Ch. D. 534.

[15]Stone *v.* Littlefield (1890) 151 Mass. 485, 24 N. E. 592; see Patterson *v.* Johnson (1885) 113 Ill. 559, 577. This is the only case where payment from the principal places no burden on the life tenant and does not amount to an apportionment, as he pays none of the tax and, receiving no income from the property, loses none.

[16]Clark *v.* Middlesworth (1882) 82 Ind. 240.

[17]Perry, Trusts, § 919.

[18]Hite's Devisees *v.* Hite's Ex'r. (1892) 93 Ky. 257, 269, 20 S. W. 778; Loring, Trustee's Handbook, 37; Penn-Gaskell's Estate (1904) 208 Pa. 342, 57 Atl. 714; Rhode Island Hosp. Trust Co. *v.* Waterman (1901) 23 R. I. 342, 50 Atl. 389.

these expenses should be charged to the *corpus,* thereby working an equitable apportionment. It is a simple matter to apportion such expenses between a life tenant and a remainderman, because the mortality tables show the relative values of their interests, but there is no apparent method of computing the duration of a fee subject to executory limitations, on which to base the present value of an annuity. Thus the court was limited to this method of equitable apportionment, which, indeed, seems the simplest and best method where it is applicable.

THE DECLARATION AND RESCISSION OF CASH AND STOCK DIVIDENDS.—The duty of the board of directors of a corporation to declare cash dividends upon the accumulation of a sufficiently large amount of available profits is an indefinite obligation, generally unenforcible in the absence of proof of bad faith.[1] In the ordinary case the stockholder acquires a right to a dividend upon his stock only when the directors have, in the proper exercise of their powers, declared the dividend. The act of declaration establishes the relation of debtor and creditor between the corporation and the stockholder, without any further act of the directors.[2] There is a tendency, however, to regard the right which is thus granted to the stockholder as defeasible at the discretion of the directors, acting for a reasonably proper cause.[3] Furthermore, this theory is not universal, and a specific act of appropriation to the stockholder is sometimes required.[4] Until such an act is done, then, it is held that no debt has been created, and the directorate is free to rescind the declaration without legal injury to the stockholder.[5] When

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[1]Mulcahy *v.* Hibernia S. & L. Society (1904) 144 Cal. 219, 77 Pac. 910; see Jackson's Adm'rs. *v.* Newark Plankroad Co. (1865) 31 N. J. L. 277. However, it is not unusual for a corporation to guarantee dividends upon its stock. The stockholder's right to such dividends does not accrue upon the date set in the guaranty; Taft *v.* Hartford etc. R. R. (1866) 8 R. I. 310; there is an implied condition that a sufficient amount of accumulated profits be available. Jermain *v.* Lake Shore etc. Ry. (1883) 91 N. Y. 483; Boardman *v.* Lake Shore etc. Ry. (1881) 84 N. Y. 157. The right to sue upon the guaranty is said to vest in the stockholder when both contingencies are fulfilled, but, being an incident of the stock, passes with it on assignment. Boardman *v.* Lake Shore etc. Ry., *supra.* It will be observed, however, that when the directors have declared the dividend, the right to it is no longer an incident of the stock, and an assignment of the stock does not transfer the dividend. See Jermain *v.* Lake Shore etc. Ry., *supra.* This leads to the conclusion that the rights to the dividend and on the guaranty become fixed and vested in the stockholder only after the declaration.

[2]McLaran *v.* Crescent Planing Mill Co. (1906) 117 Mo. App. 40, 93 S. W. 819; Wheeler *v.* Northwestern Sleigh Co. (C. C. 1889) 39 Fed. 347.

[3]See Beers *v.* Bridgeport Spring Co. (1875) 42 Conn. 17.

[4]Ford *v.* Easthampton Rubber Thread Co. (1893) 158 Mass. 84, 32 N. E. 1036. But for the suggestion that a money dividend immediately becomes the property of the stockholder, see King *v.* Paterson & H. R. R. R. (1860) 29 N. J. L. 82; *cf.* Spooner *v.* Phillips (1892) 62 Conn. 62, 24 Atl. 524.

[5]Ford *v.* Easthampton Rubber Thread Co., *supra*; see Dock *v.* Schlichter Jute Cordage Co. (1895) 167 Pa. 370, 31 Atl. 656; *contra,* McLaran *v.* Crescent Planing Mill Co., *supra.* Where dividends have been illegally declared, under a misapprehension of the existence of profits, they may be reclaimed by the corporation even after payment to the stockholders, on the theory that they had been paid and received under a mutual mistake. Grant *v.* Ross (1896) 100 Ky. 44, 37 S. W. 263.